

Serial No. 10/604,435  
Filed: July 21, 2003  
Page 9 of 16

Examiner: Hugh B. Thompson  
Group Art Unit: 3634

### **REMARKS/ARGUMENTS**

Claims 1-27 are pending in the application. Claims 1-6, 8-10, 12-18, 21-25, and 27 stand rejected under 35 U.S.C. §102(b). Claims 7, 11, 19, 20, and 26 stand objected to, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates the Examiner's early notification of allowable subject matter.

Claims 1, 3, 7, 9, 10, 11, 12, 15, 19, 22, and 26 remain unamended. Claims 28-34 have been added. Claim 28 is essentially claim 26 rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant traverses the rejections, and submits that claims 1-6, 8-10, 12-18, 21-25, and 27 are allowable over the cited prior art, as explained herein. Reconsideration and reexamination of the application is respectfully requested in view of the following remarks.

#### **Rejections Under 35 U.S.C. §102(b)**

Claims 1-6, 8-10, 12-18, 21-25, and 27 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 5,628,383 to McIntyre. The rejections are traversed.

The claimed invention is not anticipated under §102 unless each and every element of the claimed invention is found in the prior art. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

Claim 1 requires an adjustable elevated hunting stand for supporting a person a spaced distance from the ground relative to a vertical structure, comprising

- a first platform comprising a first frame having a first member adapted for compressive register with the vertical structure, and at least one second member attached to the first frame and adapted for tensile register with the vertical structure

Serial No. 10/604,435  
Filed: July 21, 2003  
Page 10 of 16

Examiner: Hugh B. Thompson  
Group Art Unit: 3634

- a second platform comprising a second frame having a first member adapted for compressive register with the vertical structure, and at least one second member attached to the second frame and adapted for tensile register with the vertical structure
- at least one of the first and second platforms including an attitude adjuster interposed between the at least one of the first and second frames and the vertical structure
- wherein the person can adjust the planar alignment of the at least one of the first and second frames relative to the vertical structure when the person is supported on the adjustable elevated hunting stand.

Claim 9 requires an adjustable elevated hunting stand for supporting a person a spaced distance from the ground relative to a vertical structure, comprising

- a first platform adapted to support a person in a standing position
- a second platform adapted to support a person in a seated position
- at least one of the first and second platforms including an attitude adjuster interposed between the at least one of the first and second platforms and the vertical structure
- wherein the person can adjust the planar alignment of the at least one of the first and second platforms relative to the vertical structure when the person is supported on the adjustable elevated hunting stand

Claim 12 requires an adjustable elevated hunting stand for supporting a person a spaced distance from the ground relative to a vertical structure, comprising

Serial No. 10/604,435  
Filed: July 21, 2003  
Page 11 of 16

Examiner: Hugh B. Thompson  
Group Art Unit: 3634

- at least one platform adapted for at least one of seated and standing support of a user when occupying the hunting stand the spaced distance from the ground relative to a vertical structure, the at least one platform comprising
  - a first member having an inner surface adapted for compressive register with the vertical structure
  - a second member having an inner surface adapted for tensile register with the vertical structure, wherein the inner surface of the first member and the inner surface of the second member cooperate to define a selectable distance therebetween
  - an adjustable mounting between the first and second members, wherein the adjustable mounting between the first and second members allows for adjustment of the selectable distance between the respective inner surfaces
- whereby vertical structures having varying perimeters can be accommodated by selective adjustment of the selectable distance.

McIntyre '383 discloses a climbing tree stand 12 comprising a seating unit 14, an engagement blade 17, and a platform frame 18. *Col. 1, ln. 66 – col. 2, ln. 2, 13-15.* The seating unit 14, engagement blade 17, and platform frame 18 are interconnected by a pair of S-shaped frame members 13 and linear vertical members 20, 21. *Col. 2, ln. 6-7.* A second, separate lower unit 25 or upper unit 32 is used with the stand 12 to facilitate ascent of the tree. *Col. 2, ln. 2-4.* The platform frame 18 is secured to the tree by a cinch and ratchet device 28 which encircles the tree and draws the platform frame 18 against the tree. *Col. 3, ln. 40-43.*

The platform frame 18 is normally spaced away from the tree, i.e. 1 to 2 inches, during climbing of the tree, *col. 2, ln. 43-47*, and does not engage the tree during ascent, *col. 3, ln. 39-40.* The platform frame 18 can be drawn against the tree by the ratchet and cinch unit 28 to further secure and stabilize the stand 12 against the tree. *Col. 3, ln. 40-45.* This is done after the stand 12 is initially secured to the tree. *Col. 3, ln. 40-41.*

Serial No. 10/604,435  
Filed: July 21, 2003  
Page 12 of 16

Examiner: Hugh B. Thompson  
Group Art Unit: 3634

The Examiner asserts that McIntyre '383 "discloses a tree stand assembly 12 comprised of platforms 14, 18, 25 (second), platform 14 and 18 having pivoting members (unnumbered), a ratchet 28 that adjusts the stand relative to the tree 11, frame elements 22, 23, 24, 21, 19, and tree engaging elements 15, 16, 17 (adjustable) (second platform tree engaging elements unnumbered)." Contrary to the Examiner's assertion, McIntyre '383 does not anticipate claims 1, 9, and 12, and therefore does not anticipate the claims depending therefrom.

#### Claims 1-6, 8

The adjustable elevated hunting stand of claim 1 requires that at least one of the two platforms have an attitude adjuster which is interposed between one of the two frames and the vertical structure. McIntyre '383 does not disclose an attitude adjuster interposed between the seating unit 14, the platform frame 18, or the lower or upper unit 25, 32, and the tree. The Examiner apparently considers the ratchet and cinch unit 28 to be an attitude adjuster. However, as illustrated in Figure 1, the ratchet and cinch unit 28 are not interposed between the platform frame 18 and the tree. Rather, the ratchet and cinch unit 28 encircle the tree. Furthermore, the platform frame 18 is in intimate contact with the tree without any interposed structure or device. Thus, this element of claim 1 is not disclosed by McIntyre '383.

Claim 1 also requires that the attitude adjuster enable a person to adjust the planar alignment of one of the two frames relative to the vertical structure when the person is supported on the stand. This is not shown in McIntyre '383. As illustrated most clearly in Figure 1, the tree stand 12 is suspended from the tree by the engagement of the engagement plate 16 attached to the seating unit 14, and the engagement blade 17. As a person sits on the seating unit 14 or stands on the platform frame 18, the engagement plate 16 will be forced into the tree and will act as a fulcrum, while the engagement blade 17 will be drawn into the tree, with the tree stand 12 in effect pivoting around the engagement blade 16. Thus, the tree stand 12 is suspended from the tree wholly by the action of the engagement plate 16 and the engagement blade 17.

With the seating unit 14 effectively "clamped" to the tree in an orientation defined by the interaction of the engagement plate 16 and the engagement blade 17 with the tree (having a given

Serial No. 10/604,435  
Filed: July 21, 2003  
Page 13 of 16

Examiner: Hugh B. Thompson  
Group Art Unit: 3634

diameter), the platform frame 18 is suspended from the seating unit 14 in an orientation defined by the seating unit 14 due to the frame members 13, which interconnect the platform frame 18, the seating unit 14, and the engagement blade 17, and the vertical members 21. Indeed, the platform frame 18 provides no structural support until it is drawn toward the tree by the ratchet and cinch unit 28. Because of the interconnection of the platform frame 18, the seating unit 14, and the engagement blade 17, by the frame members 13 and the vertical members 21, the platform frame 18 is restricted against movement independent of the seating unit 14. Thus, while the platform frame 18 can be drawn toward the tree by the ratchet and cinch unit 28, its planar alignment cannot be adjusted by the ratchet and cinch unit 28 because its orientation is established by the seating unit 14, the frame members 13, and the vertical members 21. The ratchet and cinch unit 28 will merely draw the platform frame 18 against the tree, to extend outwardly at whatever angle is dictated by the diameter of the tree and the orientation of the seating unit 14, and without any further adjustment able to be made of the platform frame 18. An attitude adjuster which enables adjustment of the planar alignment of one of two frames is also not disclosed by McIntyre '383.

Since "each and every element of the claimed invention" of claim 1 is not found in McIntyre '383, *Hybritech, Inc., supra*, McIntyre '383 does not anticipate claim 1 under 35 U.S.C. §102(b). For the same reasons, claims 2-6, and 8, which depend from claim 1, are not anticipated by McIntyre '383.

#### **Claims 9-10**

As with claim 1, claim 9 requires a stand comprising two platforms, at least one of which must include an attitude adjuster interposed between the platform and the vertical structure, so that a person can adjust the planar alignment of the platform relative to the vertical structure when the person is supported on the hunting stand.

As discussed with respect to claim one, McIntyre '383 does not disclose an attitude adjuster interposed between the seating unit 14, the platform frame 18, or the lower or upper unit 25, 32, and the tree. Furthermore, McIntyre '383 does not disclose any device for adjustment of

Serial No. 10/604,435  
Filed: July 21, 2003  
Page 14 of 16

Examiner: Hugh B. Thompson  
Group Art Unit: 3634

the planar alignment of the frames relative to the tree. The ratchet and cinch set 28 is used to draw the platform frame 18 into engagement with the tree. However, because of the interconnection of the platform frame 18, the seating unit 14, and the engagement blade 17, by the frame members 13 and the vertical members 21, the ratchet and cinch unit 28 cannot adjust the planar alignment of the platform frame 18 relative to the tree. It will merely draw the platform frame 18 against the tree, to extend outwardly at whatever angle is dictated by the diameter of the tree and the orientation of the seating unit 14, and without any further adjustment of the platform frame 18 allowed.

Since "each and every element of the claimed invention" of claim 9 is not found in McIntyre '383, *Hybritech, Inc., supra*, McIntyre '383 does not anticipate claim 9 under 35 U.S.C. §102(b). For the same reasons, claim 10, which depends from claim 9, is not anticipated by McIntyre '383.

#### **Claims 12-18, 21-25, and 27**

The adjustable elevated hunting stand of claim 12 requires an adjustable mounting located between first and second platform members which allows for adjustment of a selectable distance between the inner surfaces of the first and second platform members so that vertical structures having varying perimeters can be accommodated by selective adjustment of the selectable distance.

McIntyre '383 does not disclose an adjustable mounting located between the first and second members which allows for adjustment of the selectable distance. Assuming for the sake of argument that the "adjustable mounting" on the McIntyre '383 stand is the ratchet and cinch unit 28, the portion of the platform frame 18 in contact with the tree would necessarily comprise the first member, and the ratchet and cinch set 28 would necessarily comprise the second member. However, claim 12 requires that the adjustable mounting be located **between** the first and second members, and thus obviously the adjustable mounting must comprise an element separate from the portion of the platform frame 18 in contact with the tree and the ratchet and cinch set 28. This configuration is

Serial No. 10/604,435  
Filed: July 21, 2003  
Page 15 of 16

Examiner: Hugh B. Thompson  
Group Art Unit: 3634

not disclosed in McIntyre '383. Thus, this element of claim 12 is not disclosed in McIntyre '383

Furthermore, the adjustable mounting must allow for adjustment of the selectable distance. The distance between the frame 18 and the ratchet and cinch set 28 is not "selectable" as required by claim 12. The distance is dictated solely by the diameter of the tree at the height at which the ratchet and cinch set 28 wraps around the tree. Thus, the distance between the frame 18 and the ratchet and cinch set 28 cannot be adjustable as required by claim 12.

Since "each and every element of the claimed invention" of claim 12 is not found in McIntyre '383, *Hybritech, Inc., supra*, McIntyre '383 does not anticipate claim 12 under 35 U.S.C. §102(b). For the same reasons, claims 13-18, 21-25, and 27, which depend from claim 12, are not anticipated by McIntyre '383.

#### **New claims 29-34**

For the reasons discussed above with respect to claims 1-6, 8-10, 12-18, 21-25, and 27 new claims 29-34 are not anticipated by McIntyre '383. In particular, independent claims 29 and 32 require a platform having a fixed portion and a movable portion and an attitude adjuster interposed between the fixed portion and the movable portion. These elements are not disclosed in McIntyre '383 and, consequently, McIntyre '383 does not anticipate claims 29 and 32. For the same reasons, McIntyre '383 does not anticipate dependent claims 30, 31, 33, and 34.

#### **CONCLUSION**

For the reasons discussed above, claims 1-6, 8-10, 12-18, 21-25, 27, and 28-34 are in condition for immediate allowance. It is respectfully submitted that all of the pending claims in the application are allowable over the prior art of record. Notification of allowability is respectfully requested. Applicant respectfully requests an Advisory Action be issued in this case.

Serial No. 10/604,435  
Filed: July 21, 2003  
Page 16 of 16

Examiner: Hugh B. Thompson  
Group Art Unit: 3634

If there are any remaining issues which the Examiner believes may be resolved in an interview, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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Dated: 1/19/05

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